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BEFORE THE CITY COUNCIL
CITY OF SEATTLE

In the Matter of the Application of

SEATTLE CHILDREN'S HOSPITAL

for approval of a Major Institution Master Plan

Hearing Examiner File No. CF 308884

LAURELHURST COMMUNITY CLUB'S
RESPONSE TO CHILDREN'S HOSPITAL
AND ITS SURROGATES' AND TO
DPD'S APPEALS OF HEARING
EXAMINER'S FINDINGS,
CONCLUSIONS, AND
RECOMMENDATION

I. INTRODUCTION

Eight (8) days of hearing, 134 exhibits (totaling literally thousands of pages), and
Ninety-One (91) witnesses: that is what this City's Hearing Examiner went through before
formulating her thirty-seven (37) page single-spaced decision. That decision recommended
denial of Children's all or nothing Master Plan application calling in effect for three
Children's Hospitals in Laurelhurst where there is now one (850,000 square feet existing vs.
2.4 million square feet proposed).

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1 Along the way the Examiner may have missed a nuance or detail. Even the best judges
2 and courts do in cases of such complexity.¹ But there can be no question that the Examiner
3 got it right in her ultimate conclusion and recommendation of denial based on the all or
4 nothing approach that Children's took and the Record that Children's itself made. The Major
5 Institutions Code has always included denial as an explicit option. See SMC 23.69.032 J.1.
6 Children's gambled that the Code did not mean what it said.

7
8 Children's all or nothing approach continues before Council. Its appeal explicitly
9 rejects the possibility of remand. It insists that the Council accept the plan which the
10 Examiner has determined should be denied. It even demands that the Council strip away some
11 of the fallback conditions crafted by the Examiner to hold Children's to its assurances.

12 The physical mechanics of cutting and pasting the Examiner's decision to comply with
13 Children's prescription for changing it could be accomplished. However, what is
14 mechanically easy is not therefore legally appropriate. Any tampering with the Examiner's
15 denial must be within the confines of the law.

16
17 Here, the Examiner's decision is supported by substantial evidence and correctly states
18 the law. For the Council to overturn it takes more than a prescription by Children's: it would
19 require that the Councilmembers retrace their Examiner's footsteps and reach an independent,
20 reasoned conclusion that she erred based on Councilmembers' review of the entire Record.

21
22
23
24 ¹ LCC has addressed some of those nuances through LCC Appeal suggestions for
25 fine-tuning of the Examiner's fallback conditions in the event that they are necessary.

1 Laurelhurst Community Club (LCC) is confident that, if the Councilmembers
2 undertake that task, they will agree with the Examiner's denial recommendation.

3 That need not be the end of the discussion. The Code clearly allows for remand to
4 explore lesser options. While Children's has refused to discuss anything other than a tripling
5 of its development, LCC has consistently suggested that all parties agree on "only" doubling
6 the institution. A remand for the purpose of exploring that "moderate" approach is within the
7 Council's authority.
8

9 **II. THE ROLE OF THE HEARING EXAMINER UNDER THE CODE**

10 The Hearing Examiner should be afforded substantial deference in the Council's
11 consideration of a Hearing Examiner's recommendation on a Major Institution Master Plan
12 pursuant to SMC 23.69.032.I and SMC 23.76.054, The Code specifies that the office of the
13 Hearing Examiner be "separate and independent," and guarantees that independence by
14 making the hearing examiner a term-appointed position, removable only for cause. SMC
15 3.02.110 (A)-(B). The Code further requires that hearing examiners be attorneys possessed of
16 "training and experience for the conduct of administrative or quasi-judicial hearings." SMC
17 3.02.110 (G). The Examiner's expertise and political independence are qualities that are
18 essential to the land use review process, particularly where the Council faces politically-
19 charged issues inherent to major institution expansion in residential neighborhoods.
20

21 The current Seattle Hearing Examiner was re-appointed by the Council in 2008 After
22 completing an initial term of service. The Council's public re-appointment and swearing-in
23 ceremony included praise by Council for her skill and diligence. This was no surprise. The
24 Examiner spent many years as key land use counsel for major local governments, notably
25

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1 Snohomish County and Kitsap County. She came to her position with a full careers' worth of
2 experience and expertise in land use law and planning and with a particular understanding of
3 the local government perspective. She is no novice.

4 As stated in the City's *A Citizen Guide to the Office of the Hearing Examiner*, "the
5 Hearing Examiner's job is to review decisions made by various City agencies to ensure that
6 they are consistent with the laws governing those decisions." The Guide goes on to say:

7 "The Office of Hearing Examiner is the City department established to conduct
8 hearings on decisions made by City agencies. Before the Office was created in 1973,
9 some of these matters were heard by the City Council, while others went directly to
10 court. The Office of Hearing Examiner is Seattle's forum for reviewing whether the
11 law, including City code requirements, has been correctly applied..." (Emphasis
added).

12 One of the reforms adopted by the Code was to get the Council out of the hearing
13 business for such applications. SMC 23.76.052.A provides that the Hearing Examiner's
14 recommendation shall be based on "a public hearing, which shall constitute a hearing by the
15 Council." Subsection H further provides that the Examiner's recommendation is based on
16 "the information gained at the hearing, from timely written comments submitted to the
17 Department or the Hearing Examiner, and from the report and recommendation of the
18 Director." These succinct words describe a process of significant depth and breadth. The
19 Examiner not only reviews everything in writing, but also observes witnesses (expert, staff,
20 institutional, lay) and their demeanor, their responses in cross-examination, and their
21 responses to her questions. Others such as the CAC, DPD, etc. each have a partial perspective:
22 the Examiner is the only one who is responsible for a complete perspective. Unlike, for
23 example, DPD staff, her employment or appointment is for a set term and does not depend
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26

1 from day to day on the Executive or the Council. Nor is she susceptible to “policy” direction
2 by higher ups.

3 SMC 23.76.054.E governs the Council’s action on Master Plans. It provides:
4 “Council action shall be based on the record established by the Hearing Examiner.” The
5 Council's decision to approve, approve with conditions, remand, or deny the application for a
6 Type IV land use decision shall be based on applicable law and supported by substantial
7 evidence in the record established pursuant to Section 23.76.054. SMC 23.76.056.A. An
8 appellant bears the burden of proving that the Hearing Examiner's recommendation should be
9 rejected or modified. Id.
10

11 These Code provisions mean that the Examiner’s recommendation cannot be
12 overturned simply because the Council, had it gone through what the Examiner went through,
13 would have reached a different result. In order to meet its burden of proof, an appellant must
14 affirmatively demonstrate that the Hearing Examiner’s recommendation is not supported by
15 substantial evidence in the public hearing record “which shall constitute a hearing by the
16 Council.” And it must be proven that the Examiner’s decision is actually and affirmatively
17 inconsistent with applicable law.
18

19 20 **III. RESPONSE TO CHILDREN’S AND ITS SURROGATES’ APPEALS**

21
22 Children’s and its various surrogates, including in this instance DPD, have submitted
23 among them 7 (seven) appeals all seeking the same relief : that the Council overturn the
24 Examiner’s denial recommendation. Children’s appeal is the most detailed – and the most
25

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1 prescriptive in dictating to the Council how it should edit the Examiner's decision. The
2 responses below therefore focus on Children's appeal. However, its points apply to the
3 surrogates' appeals as well.

4
5 **A. Response To Claims About the CAC.**
6

7
8 The ultimate approach taken by the CAC and the outcome of its process was dictated
9 by Children's all or nothing approach leading directly to the Examiner's denial
10 recommendation. The Record that the Examiner reviewed and heard is telling in this regard –
11 and it reflects a very different narrative than the story Children's and its surrogates now offer
12 in their appeals.

13 The CAC majority report was arrived at only after an unsuccessful struggle by the
14 entire CAC with the constraints imposed by Children's. On several key issues – including
15 particularly square footage and height – CAC formally, repeatedly asked Children's for
16 development options that were less intensive than what is in Children's current Master Plan
17 proposal. In response, Children's refused to provide necessary information, in the form of
18 reduced square footage or reduced height development alternatives, so that CAC could even
19 assess those options.
20

21 For example, in its February 14, 2008 comments on Children's Preliminary Draft
22 Master Plan/EIS, CAC asked Children's to prepare a development alternative with less than
23 one million new square feet. Exhibit 8, Final CAC Report, p. 251. CAC asked again for a
24 reduced development alternative in its July 25, 2008 comments on Children's Draft Master
25

1 Plan/EIS. Exhibit 8, Final CAC Report, Appendix 2, p. 258. Children's refused at every
2 juncture to even allow consideration of a potential compromise on the overall 2.4 million
3 square feet of development it had demanded. See, e.g. Examiner Recommendation,
4 Conclusion 46.

5 CAC members had also asked that Children's provide an option showing the effects of
6 a 105-foot height limit on the Laurelon Terrace property. Again, Children's refused to do so.
7 Exhibit 8, Final CAC Report, p. 205.

8 CAC was repeatedly told that while it could comment on Children's stated need (600
9 beds translating into 2.4 million square feet of development), it could not "delay" the process
10 if it had any unresolved concerns about it. Exhibit 8, CAC Final Report, p. 17, 85. Thus,
11 faced with an institution that refused to allow even consideration of a compromise on the
12 enormous intensity of its development program, some – but not all CAC members –
13 ultimately acquiesced to working within the all or nothing box Children's had created.
14

15 Ultimately, CAC members submitted an unprecedented number of formal minority
16 reports, in support of lower heights and reduced square footage: seven CAC members
17 recommended a maximum MIO height of 105' (reduced from 160'); six CAC members
18 recommended that Children's provide the long-sought reduced square footage alternative; and
19 three CAC members recommended that new development in the master plan be limited to
20 704,000 square feet (compared with the 1.5 million in the plan that Children's continues to
21 insist upon before Council). Exhibit 8, CAC Final Report, Appendix 1 (Minority Reports), p.
22 246-247, and 251-253.
23
24
25
26

1 Significantly, to ensure that the Examiner and the Council were aware of the entire
2 CAC's requests for information and consideration of alternatives and what had occurred in
3 response, five CAC members also signed a Minority Report describing the constraints under
4 which the CAC had been working, the effect these constraints had on the CAC final report
5 and recommendations, and their ongoing concerns that the master plan that was before them
6 (and is now before City Council) is too much for the Laurelhurst location. Exhibit 8, CAC
7 Final Report, Appendix 1 (Minority Reports), p.254-255. Another Minority Report, signed
8 by two CAC members, further described obstacles to CAC decision-making and formulating
9 majority and minority positions. Exhibit 8, CAC Final Report, Appendix 1 (Minority
10 Reports), p.255-256.

12 Children's appeal omits this substance in its recounting of the CAC process. It focuses
13 instead for example, on a claim that the CAC received comments "by the hundreds, the bulk
14 of it favorable to Children's Master Plan." Children's Appeal at 4. The Record does not
15 support this claim on what the CAC received. But, more importantly, this approach by
16 Children's in its appeal to the Council illustrates the problem in Children's approach all along,
17 culminating in the Examiner's denial recommendation.

19 This is not a plebiscite. The decision before the Hearing Examiner and this Council is
20 a quasi-judicial land use decision – not a public relations contest. It is to be expected that a
21 major institution, particularly one backed by both a well-financed in-house public relations
22 staff and a skilled behind the scenes "public affairs" firm, will generate many letters of
23 support. However, Children's throughout the process persisted in mistaking its PR machine's
24

1 ability to generate such support for satisfaction of the inquiries and requirements of the Land
2 Use Code and Comprehensive Plan.

3 **B. Children's Refusal to Compromise or Allow Remand**

4 Henry Ford once said that his customers could buy a Model T in several colors so long
5 as they were black. Taking a cue from Henry, Children's has offered several "alternatives" –
6 so long as they add up to 2.4 million square-foot. The Examiner got it right in Finding 41
7 and Conclusion 46: Children's has not offered meaningful alternatives
8

9
10 Yet, Children's tells the Council in its Appeal that it offered a variety of alternatives.
11 However, none of the alternatives, modifications or conditions it touts altered the central,
12 component of its proposal – the overall development program of 2.4 million square feet that
13 would nearly triple the size of the already enormous institution. This proposed square footage
14 is at the heart of the plan's failure to achieve a balance between community protection and
15 institutional demands.
16

17 Children's refusal was raised again and again during the process, but Children's
18 would not explore any alternative that reduced development by one iota. Children's points to
19 its proposed usurpation of large residential areas (Laurel Terrace, the Hartmann parcel) as
20 evidence of its flexibility and attunement to neighborhood concerns. In other words, per
21 Children's, it has offered choices: impossibly high skyscrapers on its current campus to give
22 it a total of 2.4 million square feet in development or slightly shorter skyscrapers spread
23 across residentially zoned boundary added to the Children's campus – still adding up to the
24 same 2.4 million square feet.
25

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1 If it were being forthright, Children's would at least acknowledge that it did not offer
2 choices – it offered echoes. Either way, the square footage demanded – and the traffic impact
3 associated with it – stayed the same. This refusal to compromise on square footage, mitigate
4 significant impacts resulting from the square footage, and find the Code-required balance
5 between the community and institution, resulted in her recommendation to deny the proposal
6 that is now before Council. HE Recommendation, Conclusions 39-46.²

7
8 Given the Examiner's decision, a moderate response would be to acknowledge the
9 possibility of remand as a key step in considering middle ground. However, Children's
10 Appeal flatly rejects this alternative to denial. It states intransigently – and incorrectly – that
11 there is no basis for the Council to remand this application back to DPD or the Examiner for
12 further information. Children's Appeal at 8.

13 To the contrary, the Examiner identified in her recommendation a compelling basis for
14 remand: the fact that Children's placed off-limits and refused to "evaluate any alternatives
15 that included less than 2.4 million square feet of development area," which "made it
16 impossible for anyone to determine what facilities might be lost, and what portion of total
17 need unmet, if development square footage had to be reduced in order to protect the livability
18 and vitality of adjacent neighborhoods." HE Recommendation, Finding 41, p. 8.

20
21 ² Children's tries at one point in its appeal to blame the Examiner arguing that, in response to LCC's appeals
22 under SEPA, the Examiner did not require the EIS to include lesser development alternatives. Children's
23 apparently forgets what it argued in the past: that it could not be compelled to include such alternatives in a
24 SEPA document regardless of how it might be said to affect decision-making under the Major Institutions Code.
25 Children's got what it wanted: it was not forced to include such alternatives in the EIS. But, that only enhanced
26 the likelihood that the Examiner, under her independent nonSEPA Major Institutions Code regulatory authority
would recommend denial. See Bellevue Farm Owners Ass'n v. State of Washington Shorelines Hearings Board,
100 Wash.App. 341, 352, 355, 997 P.2d 380, 386 (Div. 2, 2000); review denied
142 Wash.2d 1014, 16 P.3d 1265 (Dec. 5, 2000).

1 LCC concurs with the Examiner's findings that preparation of such a reduced square
2 footage alternative – an alternative that was sought by community members and CAC early
3 and throughout the master planning process – would have facilitated her (and now Council's
4 review). A remand for a reduced development plan would provide the Council, Children's and
5 the community an opportunity to tailor the components of a balanced plan.
6

7
8 **C. The Appeals Have Distorted The Examiner's Reference to Urban Villages,
Which Was Appropriate.**

9 Children's objects to the Examiner's reference to the City's urban village strategy
10 adopted under the mandates of the Growth Management Act (GMA). However,
11 acknowledging the existence and import of these keystones of the City's legally required
12 framework for planning was appropriate. The alternative would have been to conduct the
13 balancing required by the Major Institutions Code with no context – in a vacuum. While
14 Children's approach all along depended on such blinders, the Hearing Examiner – an attorney
15 many years of experience and universally acknowledged expertise in land use matters –
16 refused to put them on.
17

18 The City's urban village development plan, which is based on the designation of areas
19 inside and outside of urban villages, did not just "happen." An extensive, multi-year,
20 citywide comprehensive planning process was undertaken to develop this cornerstone of the
21 Comprehensive Plan: "The ideas in the plan were developed over five years through
22 discussion and debate and the creative thinking of thousands of Seattle citizens working with
23 City staff and elected officials." Comprehensive Plan, p. v. The result was adoption of a
24
25

1 “comprehensive approach to planning for a sustainable future” and a “strategy of focusing
2 future development in urban villages [that] continues to direct new development away from
3 Seattle’s single-family areas.” HE Recommendation, Conclusion 40, p. 29; Comprehensive
4 Plan, p.1.4

5 Some major institutions are located in urban villages/centers, others are located in
6 neighborhoods that are outside urban villages. Their designations generally reflect the existing
7 and intended land use and development character of the respective areas – in other words, the
8 “context” – surrounding the institutions. Exhibit 22, Attachment I. Thus, Children’s and the
9 Laurelhurst neighborhood were determined to be unsuitable for the intensity of urban village
10 development after a carefully considered, deliberative process – the determination was not the
11 result of happenstance.
12

13 Children’s argues that this determination should not be recognized in the context of
14 balancing neighborhood impacts and institutional needs required under the Major Institutions
15 Code because it would create “two classes of major institutions.” Instead, it articulates a
16 remarkable view that Major Institution designation is a blanket entitlement for development
17 to whatever extent the institution demands regardless of context. However, were that the case,
18 there would be no need for the criteria and process established by the Major Institutions Code.
19 And, it would be extraordinary if, within that process – and with no such explicit direction by
20 the Major Institutions Code – the fact that Children’s proposed expansion of unprecedented
21 intensity is outside of a designated urban village were not acknowledged.
22

23
24 Children’s apparent argument, borne out in its all or nothing Master Plan is that it
25 should make no difference in the balancing that is required by the Major Institutions Code

1 when considering institutions that are located in areas that are intensely developed urban
2 villages/centers as opposed to those that are located in areas outside of urban villages.
3 However, the balancing between community and institution that is the fundamental mandate
4 of the Major Institutions Code requires an understanding of the existing and intended land use
5 and development character of the neighborhood in which an institution is located. Without
6 such understanding, there would be no basis to determine the appropriate balance. That is
7 why the Hearing Examiner described Children's Master Plan as proposing "development
8 outside an urban village at an intensity that is designed for development within an urban
9 village. Children's is asking that the proverbial "square peg" be forced into a "round hole",
10 but it does not fit." HE Recommendation, Conclusion 43, p. 29.

12 Unlike Children's, the Examiner properly recognized that balancing an institution's
13 needs with "the need to protect the livability and vitality of adjacent neighborhoods requires
14 an appreciation of the context for the balancing" HE Recommendation, Conclusion 39, p. 29.
15 Her appreciation, or understanding, of Children's context was appropriately informed by
16 numerous sources, including but not limited to the Land Use Code, EIS and Comprehensive
17 Plan.
18

19 Children's also argues that its proposed Master Plan is an application for a "specific
20 development project" and that the Major Institution Code does not allow reference to the
21 City's urban village policies. Again, this reflects Children's misunderstanding of the Code
22 and the Examiner's application of it, as well as Children's own application. There are no
23 references in the Examiner's recommendation to urban village policies being used as the
24 authority for her denial. The Examiner recommended master plan denial under the balancing
25

1 authority of the Major Institutions Code and because of impacts related to height, bulk and
2 scale, transportation, and land use. HE Recommendation, Conclusions 43–46, p. 29-30.
3 “Urban village” appears in only three of the Examiner’s eight conclusions on the Code-
4 required balance that is to be achieved between “a Major Institution’s ability to change and
5 the public benefit derived from change with the need to protect the livability and vitality of
6 adjacent neighborhoods.” SMC 23.69.002.B.

7
8 Even were application of urban village policies an issue, no one, including the Hearing
9 Examiner, has said that under such policies major institutions are completely prohibited
10 outside of urban villages. This contention by Children’s is a diversion from the much harder
11 issue that the Examiner was duty bound to address: whether Children’s level of development
12 is too much for the Laurelhurst area – an area that is outside of an urban village and is
13 characterized by and designated under the City’s Comprehensive Plan and zoning code for
14 low scale and low intensity development that characterizes such areas.

15
16 Children’s and DPD also attempt to avoid this issue by reference to a Comprehensive
17 Plan urban village policy (UV 39) to: “Accommodate growth consistent with adopted master
18 plans for designated major institutions located throughout the City.” (Emphasis added). These
19 arguments overlook the word “adopted.” Children’s proposal is for an institution three times
20 larger than its currently adopted plan allows, has more far taller and more massive buildings
21 than are allowed in its adopted plan, and is more than double its adopted plan’s .9 FAR.
22 Children’s is in fact proposing development that is patently not consistent with its adopted
23 master plan, which is what UV 39 addresses.

1 In Conclusion 40, the Examiner refers to explanation in the Comprehensive Plan
2 about the intent of the urban village growth strategy , including as it relates to job and
3 residential growth and intended development character in areas like Laurelhurst with less
4 dense development patterns. HE Recommendation, p. 29. Children's complaint that the
5 Examiner cited such official statements to inform her balancing decision under the Code does
6 not reveal an error in the Examiner's part. It does, however, highlight the intransigence of
7 Children's position. Such official interpretative statements provide appropriate context for
8 the balancing required by the Major Institutions Code, and in meaningfully evaluating other
9 applicable Code criteria.
10

11 For example, the rezone criteria for major institution overlay districts *requires*
12 consideration of the Code's general rezone criteria, which in turn *requires* consideration of
13 whether an area is inside or outside of an urban village in order to determine appropriate
14 height limits: "In general, height limits greater than forty (40) feet should be limited to *urban*
15 *villages*. Height limits greater than forty (40) feet may be considered *outside of urban villages*
16 where higher height limits would be consistent with an adopted neighborhood plan, a major
17 institution's adopted master plan, or where the designation would be consistent with the
18 existing built character of the area." SMC 23.34.124.D and .008.E.4; emphasis added. The
19 same general rezone criteria requires an evaluation of Children's proposal for the "negative
20 and positive impacts" on the surrounding area related to "employment activity" – an
21 assessment that cannot be made without an understanding of whether Laurelhurst is in an area
22 that is intended to have large employment growth (such as in urban hubs and centers) or not
23 (in areas outside of urban villages). SMC 23.34.008.F.1.f.
24
25

1 Not the least of the Code General Rezone Criteria applicable here are those requiring
2 examination of zoning history and precedential effect in and around the area proposed for a
3 major institution rezone. SMC 23.38.004.C. Children's seems to have forgotten in its Appeal
4 that its plan proposes two such rezones of substantial areas that have never before been zoned
5 for major institutional use: the 6.75-acre Laurelon Terrace property and the 1.78-acre
6 Hartman property located across Sand Point Way. Even if one assumes that all of Children's
7 arguments are correct and that the Examiner should have worn blinders in assessing
8 Children's proposal for its existing Major Institution Campus, the Examiner was clearly
9 bound to take into account in assessing Children's extra-campus rezones which are for areas
10 that are neither designated Urban Villages nor within Children's adopted Master Plan
11

12 In sum, without an understanding of the existing and intended character of a major
13 institution's surrounding area – which is determined by both the Land Use Code and the
14 Comprehensive Plan – decisions for master plans would occur in a vacuum, without regard
15 for the context in which they are located. The Code neither authorizes nor allows the blinders
16 that Children's complains the Examiner did not wear.
17

18 None of Children's attacks on particular Hearing Examiner Findings or Conclusions
19 make sense. For example, in Conclusion 42, the Examiner simply states that the designation
20 of urban villages and centers occurred during the Comprehensive Plan process in the 1990s,
21 and that Laurelhurst (including Children's) was not designated as an urban village or center.
22 While this acknowledgement is inconvenient for Children's, the Examiner would have been
23 remiss had it not been noted. Nothing in Conclusion 42 strips Children's of any "pre-existing
24 rights" under the Major Institutions Code. Children's has no right or blank check under the
25

1 Major Institutions Code to develop whatever it wants, wherever it wants, as large as it wants.
2 The process established by the Major Institutions Code requires the consideration of
3 numerous factors and the balancing of what Children's wants with protection of the
4 Laurelhurst community. This same process allows for modification or denial of Children's
5 master plan. SMC 23.76.052.H, 23.69.032.J.1 and 23.76.056.A. Children's location in a low
6 scale, low density, primarily single family neighborhood is a key consideration in determining
7 whether its master plan should be approved, modified or denied. When given the opportunity
8 to establish a growth-oriented future for Laurelhurst, the City determined that the
9 neighborhood was not an appropriate area for the intensity of growth anticipated in urban
10 villages. It essentially affirmed, for the future, the existing low scale, low intensity
11 development character of the area – a context that must be protected in any balancing with the
12 Children's needs.
13

14 In Conclusion 43, the Examiner acknowledges that, while major institutions are
15 permitted in areas outside of urban villages, Children's requested height is greater than other
16 major institutions that are located in similar, low intensity settings outside of urban villages,
17 and its level of traffic and height, bulk and scale impact is commensurate with development
18 that is designed for more intensely developed urban villages. Such context comparisons are
19 illustrative of the misfit between Children's and its context, and appropriate when determining
20 the Code-required balance between Children's needs and ensuring the livability and vitality of
21 the low scale, low intensity Laurelhurst neighborhood.
22

23 Again, it is understandable why Children's would prefer that this plainly stated
24 conclusion not be made, but there is no basis for faulting the Examiner for not wearing such
25

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1 blinders. While others, in the Executive Departments, for example, may have put them on, the
2 Examiner's expertise, oath, and job description required that she provide a straightforward
3 and fully informed analysis and recommendation to the Council.

4 The Examiner's denial recommendation does not ignore Major Institution goals and
5 policies, despite Children's and DPD claims. The Examiner considered the information
6 presented to her – a record that Children's itself describes as "encyclopedic" in nature. She
7 determined that the appropriate balance between Children's need and neighborhood
8 protection could not be achieved under the plan that is now before Council. Because
9 Children's refused to provide a more reasonable growth plan – one that could achieve the
10 balance required by the Major Institutions Code and policies – the Hearing Examiner
11 recommended denial.
12

13 **D. Objections to Examiner Conclusions Concerning**
14 **Height Transitions Along 40th Avenue NE and NE 45th Are Unfounded**

15 The Examiner has concluded that along two boundaries of the expanded campus –
16 40th Avenue NE (Conclusion 19) and the western 350 feet of NE 45th Street (Conclusion 20)-
17 -the transition from the height of Children's future buildings to the height of the adjoining
18 low-rise multi-family, commercial and single-family development is inadequate.
19

20 Children's seeks to develop an expanded campus at a far greater height, intensity and
21 density than it is allowed under the Master Plan now in effect. Its proposed 1.9 Floor Area
22 Ratio, FAR (a measurement of density that, under Children's proposal, would not reflect
23 massive above-grade parking garages) is more than double its current allowable FAR of .9.
24 HE Finding 60. Its proposed maximum building heights (125' and 140') and MIO district
25

1 (160') are far greater than now allowed in the current master plan (90'), and would cover a
2 much larger portion of the campus. HE Exhibit 4, Figures 45 and 46, p. 63 and 65;

3 Children's boundary expansions -- its proposal to add the Laurelon Terrace site as well
4 as the Hartman site across Sand Point Way -- are not being used to maintain Children's
5 existing and -- at least comparatively -- more reasonable 90' height and .9 FAR. Instead,
6 nearly all of the increased height, bulk and intensity of Children's new development -- in
7 other words development at far beyond the current 90' height limit and .9 FAR would occur
8 on the to-be-acquired Laurelon Terrace property. HE Exhibit 4, Figure 47, p. 67 That
9 property is directly opposite single family houses, duplexes and fourplexes that today, in
10 planning and zoning terms, enjoy a residential streetscape of very low scale, low density
11 structures.
12

13 Children's objection to the Examiner's conclusions on this issue continue to rely on
14 dismissive descriptions. It is little wonder that the Examiner did not accept them in calling for
15 more mitigation for the residents and residential properties that would undisputedly be the
16 most impacted by Children's expansion under the current plan.
17

18 The residents who live along *one-fifth* of Children's campus perimeter, and along *one-*
19 *quarter* of the local residential streets that border the campus -- large percentages with respect
20 to this issue -- should not be treated as second class citizens, undeserving of impact mitigation
21 that is afforded the rest of the community. Yet this is exactly what Children's is asking City
22 Council to do. In particular, the seven single family properties located on the block south of
23 Laurelon Terrace warrant as much, and arguably more, protection and mitigation as the rest of
24 the single family block faces that are opposite campus -- block faces that consist of similar or,
25

1 in one case, fewer numbers of houses (2, 8, 9 and 9). HE Exhibit 22, Attachment G, February
2 2009 map. Such mitigation and protection, in the form of reduced square footage, reduced
3 building heights, increased setbacks, and below or at-grade parking garages – all of which
4 were provided in Children’s proposal for the remaining single family areas along the campus
5 perimeter – is not in the master plan that is before Council. The Examiner properly concluded
6 that the transition between the massive facades of the proposed hospital buildings and the
7 residential properties on the block faces along Laurelon Terrace was inadequate.
8

9 Children’s complains that the Examiner’s conclusions are different than those of DPD
10 and the CAC. The Examiner’s conclusions may be different than the final CAC and DPD
11 recommendations, but that is because they are informed by the entire record and many days of
12 hearing testimony and cross-examination that occurred after CAC and DPD issued their
13 reports based on presentations to them that were heavily dominated by Children’s.
14

15 Further, even the DPD Report acknowledges that “the EIS characterizes the Master
16 Plans’ height, bulk and scale impacts as significant” in the area around Laurelon Terrace. HE
17 Exhibit 9, p. 24-25. While CAC’s final report may have ultimately acquiesced in the
18 increased heights of the proposed master plan, CAC minutes and Minority Reports show the
19 context of such “acceptance” and leave no doubt that many members were uncomfortable
20 with heights over 105’, but that Children’s refused to work with CAC on its members’
21 repeated requests for lower square footage and a lower height of 105’ on the Laurelon Terrace
22 property. Children’s would not even model the lower height for CAC so members could
23 examine the effects: “Doug Hanafin noted that this has been requested previously by the
24 Committee [CAC] and that Children’s has never provided this.” HE Exhibit 8, minutes from
25

1 CAC meeting #22 (near the end of the CAC process) at 205. Despite the constant drumbeat
2 from Children's that CAC had no right to do so and Children's refusal to cooperate, seven
3 CAC members signed a Minority Report requesting that the MIO 160 (140/125-foot building
4 height limits) be reduced to 105' – still larger than currently allowed on campus but within the
5 range of maximum MIO heights that Council has permitted in master plans for other major
6 institutions in similar, low density residential neighborhoods. The reduced tower height
7 would have less height bulk and scale impact on the residences that are opposite Laurelon
8 Terrace and would be an important step toward achieving the balance between Children's
9 growth and neighborhood protection that is required by Code.
10

11 This issue would not go away because, despite Children's dismissive approach,
12 photographs in the EIS clearly show that buildings proposed for the Laurelon Terrace
13 property, under Children's proposed plan, will be more visible from and appear more massive
14 relative to the single family and lowrise multifamily zones and residences that are opposite
15 Laurelon Terrace, than anywhere else along the campus perimeter. HE Exhibit 6, Appendix
16 C, especially Viewpoints 8 and 13, for existing conditions (Alternative 1) and master plan
17 development (Alternative 7R).
18

19 The height, bulk and scale impact along this part of Children's campus reflects one of
20 the most severe, and least mitigated, edges of the proposed master plan. And, it is not
21 mitigated by words, such as those Children's uses in its Appeal in claiming a "transition
22 distance of 157 feet" between the towers and residential structures that, it says, renders the
23 transition "highly mitigated." While the 157' distance reported in words may sound
24 impressive, the actual, minimal mitigating effect it has on height, bulk and scale impacts with
25

1 respect to properties across 40th Avenue NE can be readily observed by looking at the before-
2 and-after photos in the FEIS. HE Exhibit 6, Appendix C-1, Viewpoints 8 and 13.³

3 In addition, Children's description pretends that what is at issue is mitigation for plain
4 vanilla structures that might occur on a typical zone edge in a residential neighborhood. In
5 fact, Children's proposed structure has an institutional form that makes mitigation particularly
6 essential. These hospital bed towers rest on blockhouse-like podiums. The podium can be up
7 to 50' high, extend nearly the entire length of the block and be located as close as 20' to the
8 40th Avenue property line – a massive, institutional façade that would be significantly higher
9 and bulkier than any of the duplex and fourplex structures located across 40th Avenue NE.
10 What Children's offers and calls a "highly mitigated transition distance" of 80' is no greater
11 than what would be provided for much smaller lowrise residential development.⁴

13 Children's also characterizes the transition in height across NE 45th Street at the
14 southwest corner of the expanded campus as "highly mitigated." This characterization by
15 Children's, which was, again, not accepted by the Examiner, is not supported by the Record.
16 The actual, significant height, bulk and scale impact of the proposed towers and Southwest
17 (SW) garage can be seen in the before-and-after photos in the FEIS. HE Exhibit 6, Appendix
18 C-1, Viewpoints 8 and 13. The distance between the single family zoned properties and the
19 edge of the *MIO 160/125'* is about 193' (60' right-of-way plus 133' to the MIO boundary).
20
21

22
23 ³ The reported 157' distance is itself overstated. It is 140' between the eastern boundary of the lowrise residential
24 *properties* and the eastern line of the upper level building setback (60' right-of-way plus 80' upper level setback).
25 Apparently, Children's 157' is based on measuring to the façade of the residential structures, as if the hospital could
26 only be viewed and the impact experienced from the inside of the residences and not from their front yards.

⁴ The distance between the lowrise properties and the building setback for the podium is 80' (60' right of way
plus 20' setback) – about the same as would occur for any lowrise residential zone and development.

1 The proposed setback along this perimeter is only 40' – smaller than any other setback that is
2 opposite single family houses and zones. HE Exhibit 4, Figure 50, p. 79. Instead of a tower
3 podium, the hospital structure that would be closest to the single family houses is the above-
4 grade southwest parking garage. Like the podium, it would have a massive façade extending
5 up to 50' high (and even higher on the northern portion of the garage) and the full length of
6 the single family block that is opposite it. The “highly mitigated transitional distance”
7 between the single family properties and the garage building setback is 100' (60' right-of-way
8 plus 40' setback) – 25'to 35' less than provided opposite all other single family houses, which
9 face lesser impacts.
10

11 Children's also attempts to justify its height transitions by reference to “proposed
12 landscaping and street level treatment” referring, for example to various slides from a power
13 point presentation it made. However, despite a modern tendency to confuse the two, the terms
14 “powerpoint” and “proof” are not synonymous. The referenced slides show potential
15 landscape treatments, but they do not demonstrate effective mitigation for tall, bulky
16 institutional buildings in a low density residential setting. The Hearing Examiner clearly
17 understood the difference.
18

19 For example, Slides 26 and 30 contain photographs of mostly small, intimate spaces
20 on other sites and projects. The photos show street level details and treatments that can
21 enhance the immediate pedestrian environment, but these do not mitigate the impacts from
22 tall, bulky structures. Slide 27 contains a sketch that appears to show a detail of the
23 emergency room entrance off of 40th Avenue. The presentation is nice, as is often the case
24 with powerpoint renditions, but it does not provide necessary context to demonstrate height,
25

1 bulk and scale mitigation of the podium façade (which appears taller in the actual master plan
2 documents than in the power point sketch). Slide 31 contains a sketch drawn from a vantage
3 point that is similar to Viewpoint 13, in the before-and-after photos of the FEIS, and is very
4 similar to the “after” photo. Instead of showing effective mitigation, this sketch further
5 demonstrates the “stunning” – the Examiner’s word – change in the physical character (from
6 wood, brick and pitched roofs to concrete and glass) and significantly increased height, bulk
7 and scale of the buildings that would be viewed from the single family houses.
8

9 **E. The Examiner Correctly Determined that Children’s MIO Heights Were Not**
10 **A Basis for Approval**

11 Children’s takes exception to the Examiner’s Conclusions 36, 37 and 38. It complains
12 that the Examiner ignored the work of the CAC on MIO height issues. In fact, the Examiner
13 acknowledged and cited the specifics of the CAC modifications in, for example, her Finding
14 67 and Conclusion 37. However, after conducting an extensive public hearing process
15 including expert testimony and cross-examination of experts and reviewing the entire record
16 (not just the aspects of it laid before the CAC), the Examiner determined that the height
17 “reductions” that CAC settled for were not sufficient based on the Record showing
18 significant impact. The Record itself reflected that, before settling on the heights in the
19 proposed master plan, CAC members repeatedly asked for modeling of 105’ but never got it.
20 They had to work with what Children’s would agree to. See, e.g., Ex 8, p. 205 (CAC minutes
21 re Hanafin statement, previously quoted).
22
23

24 Children’s claims that “Because the majority of the proposed expansion is occurring
25 on the lower elevations of the Laurelon Terrace site, the height of every building in the Master
26

1 Plan will be lower than the elevation of the highest building on the existing campus.” To
2 support this claim, Children’s includes with its Appeal Attachment C, which focuses on
3 comparison of its massive structures to a small portion of the existing G Wing that pops up to
4 elevation 218. Ex. 4, Figures 33, 35 and 36, p. 43, 46 and 47. However, this small portion of
5 the existing G Wing of the current Children’s development is a minimal part of the existing
6 campus footprint and is atypical of development allowed over-all under the current Master
7 Plan.
8

9 In contrast, while structures Children’s proposes to develop on the lower part of
10 Laurelon Terrace may be lower in elevation than the existing G Wing “pop-up” that is up the
11 hill, the contrast in their height compared to their immediate surroundings will be much
12 greater than what exists anywhere on the current campus. The new MIO 160/140 district on
13 the lower part of campus would be about 110’ higher than structures in the single family and
14 lowrise multifamily zones with a maximum allowed height of 30’ that surround this part of
15 campus. The new 160’/125’ district would be 90’ higher. These tall districts would also be
16 much closer to the edge of campus and surrounding residences than the existing MIO 90’.
17 This height, bulk and scale impact, relative to the proposal’s immediate surroundings, is the
18 significant impact that Children’s complains that the Examiner would not ignore.
19

20 In addition, significant portions of the proposed MIO 160/140 and 160/125 are located
21 on parts of the existing campus that are at much higher elevation than Laurelon Terrace. The
22 tall MIO’s would be in the area west of the current C Wing, where maximum MIO heights are
23 now much lower at 90, 70 and 50 feet. Ex. 4, Figure 33, p. 43 (for location of C Wing),
24 Figures 45 and 46, p. 63 and 65 (for existing and proposed MIO districts). There is a 20’
25

1 steep elevation gain along the current boundary between Laurelon Terrace and campus and
2 the elevation continues to rise in the area of the proposed MIO 160 (140/125). In this area,
3 buildings conditioned to 140 and 125 feet could be the same or higher elevations than the
4 tallest structure on the existing campus. Ex. 4, Figures 36 and 39, p. 47 and 51.

5 In the same selective vein, Children's tells the Council that under its proposed Master
6 Plan, "no structure will be allowed at a height of 160; only 12.32% of the proposed campus
7 will have allowed heights of 140' and 7.43% will have allowed heights of 125'; more than
8 80% of the proposed campus will have allowed heights of 90' or less..." This presentation of
9 statistics represents good advocacy but misleading analysis.

10 Children's current master plan embodies the quasi-judicial decision by the Examiner
11 and the Council who approved it that there should be no MIO districts greater than 90'.
12 During that planning process, Children's maximum campus height was reduced from 105' to
13 its current 90'. No percentage of the campus was allowed to exceed 90'. Two MIO 90
14 districts were established. One, a small area near the Laurelon Terrace boundary, was
15 conditioned to a maximum height of 74'. Under the current Children's Master Plan, there is
16 only one MIO 90 that is allowed to reach the full, maximum 90' height. Its footprint is
17 *smaller than* the MIO 90 districts now proposed by Children's. Ex. 4, Figures 45 and 46, p.
18 63 and 65. According to Children's own calculations, 20% of the proposed campus – 6 acres
19 – would have MIO and structure heights that are taller than allowed anywhere in the current
20 master plan. Children's Appeal, Attachment B; Ex. 6, Table 3.7-1 at 3.7-5 (overall acreage of
21 expanded campus). Over 28% of the campus – 8½ acres – would have MIO heights equal to
22
23
24
25
26

1 or greater than the maximum height that is currently approved for only a very small part of
2 campus. Id.

3 Drastically exceeding current height limits on a large percentage of campus does not
4 protect the livability and vitality of the surrounding community; drastically exceeding current
5 height limits and expanding boundaries is no benefit to the community.

6 The criteria for master plan approval do include a provision that:

7 Increases to height limits may be considered where it is desirable to limit MIO district
8 boundary by expansion.

9 SMC 23.34.124.C.1. However, the required trade-off is absent from Children's
10 demands. Its proposal significantly increases MIO heights by 70' and building heights by 35'
11 and 50'. At the same time, it expands – not limits – the campus boundaries by adding 8.53
12 acres, increasing the current campus by nearly 40% (39.3%).

13 Children's contrasts DPD's analysis, which focused on compatibility of height limits
14 "at the district boundary" with the Examiner's approach which, again, declined to don
15 blinders and instead also looked at the impact of what Children's calls "internal" heights, as
16 if they could not be seen except internally. See Hearing Examiner Conclusion 37.

17 The Examiner was correct in her approach. Rezone criteria, the Major Institutions
18 Code and SEPA do not limit consideration of height, bulk and scale impact to a comparison of
19 surrounding development with the MIO height at the edge of the MIO district boundary. The
20 Examiner acknowledged and considered the transitional MIO heights at the boundary, as well
21 as the proposed setbacks, but appropriately determined based on the record including
22
23
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26

1 testimony and exhibits at the hearing that they were “insufficient” to mitigate the impact of
2 Children’s proposal.

3 Children’s criticism of the Examiner’s Conclusion 38 similarly misunderstands the
4 explicit provisions of the Code. The Examiner made no mistake. The rezone criteria for major
5 institution overlay districts require consideration of the Code’s general rezone criteria. These,
6 in turn, require consideration of whether an area is inside or outside of an urban village in
7 order to determine appropriate height limits:
8

9 “In general, height limits greater than forty (40) feet should be limited to urban
10 villages. Height limits greater than forty (40) feet may be considered outside of
11 urban villages where higher height limits would be consistent with an adopted
neighborhood plan, a major institution’s adopted master plan, or where the
designation would be consistent with the existing built character of the area.”

12 SMC 23.34.124.D and .008.E.4.

13 Children’s argues that the Examiner misread the general rezone criteria of SMC
14 23.34.008.E.4 to conclude that the heights “are not consistent with the area’s existing built
15 character” when, it says, the general rezone criteria require that rezones either be consistent
16 with a major institution master plan “or” with the area’s existing built character -- not both.
17 Again, Children’s has overlooked and misstated what the Examiner actually concluded. The
18 Examiner looked in Finding 11 and Conclusion 38 at both the existing built character of the
19 area surrounding campus and at the current adopted master plan, and determined that
20 Children’s proposal was not consistent with either of them.
21

22 **F. Children’s Misunderstands the Examiner’s Recognition of “Need” and Her**
23 **Balancing Under the Code**

1 The Examiner ultimately addressed decided the issue of institutional need in the only
2 way that made sense given the disparate testimony of the parties' experts, both of whom she
3 found credible.⁵ She assumed for purposes of her decision that Children's claim of need,
4 based on even serving pediatric patients who live far away and who are served by other
5 pediatric institutions (for example in Tacoma and Spokane), would be accepted.⁶ She then
6 proceeded to the balancing still required under the Code. In doing so, she answered the
7 question of whether Children's had reached the point where fulfilling the total need it
8 presented on an all or nothing basis could be squared with the balance the Code requires.
9

10 The Examiner's conclusion was that a denial was required, that Children's all or
11 nothing demand had taken the "balance" well past the tipping point. Conclusion 46.

12 Children's attacks the Examiner's conclusion with a list of institutional good deeds
13 and needs that it claims the Examiner overlooked. However, there is absolutely no evidence
14 of this. On the contrary, her decision is chock full of acknowledgements of Children's
15 activities. See Findings 32 -38, 40, 71, 72, Conclusion 2. The Examiner weighed this with the
16 significant impacts of the unprecedented proposal, in the context of a low density single
17 family neighborhood, and determined that the impacts at the Laurelhurst location severely
18 outweighed the actual benefits, and recommended denial. Her conclusion was clearly
19
20

21 ⁵ Children's tries to tout its expert's qualifications over LCC's expert, Nancy Field. But, Ms.Field's credentials
22 are nonpareil. Exhibit 50. Her clients include many of the major medical institutions in the state. And she was, a
decade ago, part of Children's own in-house team.

23 ⁶ Finding 31 states that the DPD Director advises that Children's has shown credible need. Finding 45 states
24 that CAC – which had been told by Children's attorney that it could not delay the master plan process even if it
25 had unresolved concerns about the number of beds and corresponding square feet that Children's proposed –
accepted Children's bed projections "with the understanding that the issue would be thoroughly vetted during the
state certificate of need process" and recommended "in the strongest terms" conditions on phasing and use of
facilities to address some of their need-related concerns. Ex 8, p. 85.

1 informed by all the factors that the Code requires and explicitly accepted Children's highly
2 aggressive claims of need and benefit.

3 The Examiner need not have done so. Children's Appeal cites the testimony of Dr.
4 John Neff as supporting its argument here. Dr. Neff's testimony however came with a history.
5 He acknowledged before this Examiner in March 2009 that, in his capacity as medical
6 director for Children's during the last Master Plan proceeding a decade or so ago, he had
7 testified under oath and without qualification that Children's research facilities could not be
8 developed anywhere else than on the Laurelhurst campus. So, when he appeared before
9 Hearing Examiner Tanner, Dr. Neff conceded under cross-examination that Children's had,
10 contrary to his testimony ten years earlier that it could not be done, then gone ahead and
11 developed its research facilities in Seattle's Denny Triangle. Why ? Because, per Dr. Neff,
12 they had just gotten a lot bigger and when that occurred a satellite campus made sense. Of
13 course, Dr. Neff hastened to add that this time, he really meant what he said that everything
14 Children's is requesting must be developed in Laurelhurst. .

15
16
17 **G. The Examiner Properly Concluded That Children's Mitigation Measures**
18 **Were Not Sufficient to Avoid the Tipping Point.**

19 One of the purposes of the MI code is to "Balance a Major Institution's ability to
20 change and the public benefit derived from change with the need to protect the livability and
21 vitality of adjacent neighborhoods." SMC 23.69.002.B. "Boundaries of a Major Institution
22 Overlay District and maximum height limits must be established or amended in accordance
23 with the rezone criteria contained in Section 23.34.124, and the purpose and intent of this
24 chapter as described in Section 23.69.002. SMC 23.69.024.B.7. The Code also requires that
25

1 the DPD Director's report include a determination of "whether the planned development and
2 changes of the Major Institution are consistent with the purpose and intent of this chapter, and
3 represent a reasonable balance of the public benefits of development and change with the
4 need to maintain livability and vitality of adjacent neighborhoods. Consideration shall be
5 given to:

6 b. The extent to which the growth and change will significantly harm the
7 livability and vitality of the surrounding neighborhood.

8 SMC 23.69.032.E.2.

9 The Code authorizes the Hearing Examiner to recommend and the City
10 Council to decide whether Children's master plan achieves the appropriate balance. Here, the
11 Examiner determined that, even if it was demonstrated that "Children's should absorb the
12 entire statewide need for specialty pediatric care, it is not necessarily entitled to this intensity
13 of development, in this place, at this time," and recommended denial. Thus, even accepting
14 Children's presentation of need, the Examiner recommended denial because of balancing.
15

16
17 Children's says in its appeal that "there can be no doubt that [it] has committed to a
18 comprehensive and effective array of mitigation measures" and that it has "committed to the
19 strongest practical package of mitigation measures." Even if this were the case, the Examiner
20 correctly found that these measures did not avoid the tipping point inherent in "stunning"
21 impacts on Laurelhurst.
22

23 Further, Children's has not done all that it can. For the past two years, it has
24 stubbornly refused to incorporate or even consider any reduction in its unprecedented square
25

1 footage – the component of the master plan that is at the heart of the significant impacts –
2 even though more than half of the square footage is for speculative Phase 2, 3 and 4 projects
3 that Children’s itself has defined as “potential”. The only “planned” project is Phase 1, which
4 would increase the size of Children’s by 592,000 square feet (from 900,000 allowed in its
5 current master plan to 1,492,000.) HE Finding 22. Nearly one million square feet of
6 Children’s proposed master plan is thus for unplanned, potential projects. Yet square footage
7 reduction – the strongest and most effective mitigation for the master plan’s impacts –
8 continues to be off limits.
9

10 Children’s claim that it has committed to the “strongest possible package of mitigation
11 measures” is a stretch as well with respect to other forms of mitigation that it has refused to
12 incorporate into its proposal. For example, from the very beginning of the master planning
13 process, DPD, CAC and the community urged Children’s to put more of its facilities below
14 grade, which would make better use of its limited land and reduce height, bulk and scale
15 impacts. One good candidate for underground construction is the multi-level Southwest
16 Parking Garage, which is proposed to be located across from single family houses, at the
17 gateway to the neighborhood, and does not require daylight for its use. Yet Children’s still
18 proposes in its master plan to build the garage above grade. No alternatives were even
19 developed to explore an underground location for the garage.
20

21 Another obvious example of Children’s overstated claim of doing all that it can with
22 respect to mitigation is its proposed setback along Laurelon Terrace’s NE 45th Street
23 frontage, which is opposite single family houses and where the bulk of Children’s proposed
24 development would occur. Children’s is appropriately providing a 75-foot setback along all
25

1 other single family edges, but refuses to provide this same 75' foot setback in the area that
2 would be confronted with new above-grade parking garages and 125-foot and 140-foot
3 towers. Its proposed master plan shows a 40-foot setback and, again, no alternative ever
4 explored extending the 75-foot setback to this area, even though it was requested by CAC,
5 including in its comments on the draft master plan and EIS, and community members.

6 No one is saying that Children's has to mitigate all of its adverse impacts. Even the
7 "reduced" square footage alternative that is supported by CAC members, LCC, other
8 community organizations and numerous members of the community – an alternative that
9 would still provide nearly three times more development than was approved in Children's
10 current master plan and would increase the size of Children's facility by about 80% – would
11 have impacts, but they would be less transformative of and detrimental to the livability and
12 vitality of the neighborhood.

13
14 **H. There Is No Confusion Or Contradiction On The Part Of The Examiner With**
15 **Regard To The Issue Of Floor Area Ratio (FAR).**

16
17 There is no confusion or contradiction on the part of the Examiner with regard to the
18 issue of Floor Area Ratio (FAR); Children's attacks on the Examiner in this regard are
19 disingenuous in light of the extensive and well-informed dialogue that occurred on this topic
20 in the hearings before the Examiner. Children's simply does not like the Examiner's
21 approach which adheres to the law and the Record.

22
23 Simply put, as explained in LCC's appeal, Children's wants an FAR that would allow
24 it to build all of its requested 2.4 million square feet and all of its parking garages above
25 grade, thus maximizing the impact of its facilities. Even though they went about it

1 differently, both CAC and the Examiner saw a need to reduce the height, bulk and scale
2 impacts of Children's full build out, and to avoid unnecessary above grade development.

3 CAC recommended an FAR that would require some of Children's requested 2.4
4 million square feet to be located below grade, or it could not be built. It did so by
5 recommending a different ratio than Children's proposed (1.5 instead of 1.9), but applied the
6 ratio to the same types of facilities as Children's (that is, CAC also excluded all parking
7 structures – above and below grade – from the FAR limit and calculation).
8

9 The Examiner first recommended denial of Children's proposal. That of course would
10 make discussion of FAR moot until a modified proposal was made. However, in her fallback
11 conditions, the Examiner recommended an FAR that would require Children's to put some of
12 its 2.4 million square feet and/or its parking garages below grade, or they could not be built.

13 The Examiner used a different method than CAC for achieving this. She used the
14 same ratio as proposed by Children's – FAR 1.9 – but said that the facilities that would be
15 subject to the FAR limit should include above-grade parking garages, which are not subject to
16 FAR limits under CAC's and Children's proposals. Under both CAC's and the Examiner's
17 proposals, Children's could choose what facilities it would put below grade or not build, but it
18 would have more incentive to put parking garages below grade under the Examiner's FAR.
19

20 Children's says that the Examiner contradicted herself in Conclusions 15 and 17. This
21 is not true. Conclusion 15 is about overall gross square footage on the campus, not FAR, and
22 the Examiner correctly described what the public understood throughout the master planning
23 process – that is, Children's proposed 2.4 million square feet does not include its parking
24 structures. Although the Code requires that the overall square footage of development that is
25

1 approved in a master plan must be identified, and the square footage for Children's parking
2 facilities was identified for Children's current, approved master plan, such square footage has
3 not been calculated for the proposal master plan and is not included in the requested 2.4
4 million square feet.

5 Conclusion 17 is focused on the FAR, a separate development standard that limits the
6 amount of development square footage relative to the size of the campus, and that the Code
7 says must also be defined in an approved master plan. In this Conclusion, the Examiner made
8 it clear that she deliberately made above-grade parking structures subject to the FAR 1.9 in
9 order to "provide an incentive for Children's to reduce its height, bulk and scale impacts by
10 constructing its parking structures underground . . ." She understood the difference between
11 the overall square footage proposed for the master plan, and the FAR, and deftly used the
12 FAR to accomplish reasonable mitigation that Children's has so far refused to do.

13
14 **I. Children's and DPD Attacks on the Examiner's Findings and Conclusions**
15 **Concerning Transportation Impacts Are Inconsistent with the Record.**
16

17 When it comes to transportation impacts, Children's attempt to fit a new institution
18 three times the size of the current one into the Laurelhurst neighborhood depends heavily on
19 theoretical constructs. Many are based on mathematical modeling on a par with the
20 derivatives that, contrary to all "expert" wisdom, have brought Washington Mutual to
21 extinction and our economy to its knees . Where modeling by itself will not mask the obvious,
22 Children's turns to redefining the problem out of existence. So, for example, Children's
23 argues in its appeal that because the Sand Point Way NE/NE 45th Street/Montlake Boulevard
24 corridor are regional corridors, not Laurelhurst neighborhood streets, impacts to traffic in
25

1 such corridors cannot be characterized as a failure to "protect the livability and vitality of
2 adjacent neighborhoods" within the meaning of the Major Institution Code.

3 This assumes of course that neighborhoods, including Laurelhurst, are not part of the
4 region depending on the corridor. Further, as anyone who lives in, works in or has been to
5 Laurelhurst knows, entering and exiting the Laurelhurst neighborhood requires traveling on
6 the Sand Point Way portion of the corridor. Many trips also involve travel on the NE 45th
7 and Montlake portions of the corridor; alternatives to NE 45th and Montlake would increase
8 traffic through other single family neighborhoods and local residential street routes. The issue
9 is a local neighborhood issue as well as regional one.
10

11
12 Over-all, the Examiner's decision correctly conveys the enormity of the transportation
13 impact juggernaut created by Children's, even based on the FEIS numbers which DPD and
14 Children's were later forced to update. For example, FEIS page D-91 table 17 shows that just
15 for Phase 1 of Children's proposal the average travel time per vehicle during the PM peak
16 hour in the westbound direction between Children's and I-5 will go from 10 to 11 minutes.
17 This means for everybody on that corridor, commuters, businesses, parents taking their
18 children to or from their next stop of the day, there is a 10% increase in travel time – again,
19 just for Phase 1. A 10% change is considered significant in typical engineering judgment.
20 This amounts to 16 hours of additional delay experienced by commuters in that pm peak hour
21 because of Children's just for the westbound direction on 45th street. While DPD and
22 Children's are dismissive of such delays, they are problematic in the real world, especially
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1 because they are not alone. They will be compounded by delays caused by other major new
2 developments in the area, on SR 520, at University Village, and the like.

3 Even if all the City's undocumented transportation system improvements occur and
4 the enhanced Children's transportation management plan (TMP) conjured by Children's on a
5 statistical modeling basis succeeds, they will only mitigate 40-60% of identified
6 transportation impacts. 40-60% of the traffic impacts of the expansion will be on two of the
7 city's most congested corridors (Montlake Blvd and 45th Street) both shown to be operating
8 at LOS F in the University District subarea plan and in the FEIS page D-52 table 8 and D-91
9 table 17 (10-13 mph considered threshold for LOS F). See T-4 table 8 (Five corners impacts).
10 The hearing examiner clearly understood the level of unmitigated transportation impacts and
11 ruled accordingly.
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13 The Hearing Examiner clearly stated the peak number of trips from the FEIS as shown
14 in Finding 86 and clearly used the FEIS trips to determine the significant unmitigated impact
15 of the development as proposed. Including the existing trips and the proposed expansion
16 there would be well over a 1000 peak hour trips and during the Am and PM peak hours, with
17 a total of 2,500 (1,160 PM+ 1,340AM) of trips generated by Children's onto the local street
18 system by the appellants' own admission. Exhibit 6 FEIS table 3.10-3 Appellants' attack on
19 the Examiner's Finding summarizing peak hour trips expression without the full context of
20 what the Hearing Examiner was considering is disingenuous.
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2 Finally, with regard to Condition 18, Children's has long stated that the TMP will
3 reduce single occupancy employee vehicles (SOV) by 30%. Children's and DPD now seek to
4 water down a condition that would hold them to this assurance on a per building permit basis.
5 The request should be denied.
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9 **J. This is A Quasi-Judicial Land Use Matter and the Council Must Decide It on**
10 **That Basis Rather Than On Claims That One Appellant is More Popular Than**
11 **Another.**

12 Attacking LCC rather than focusing solely on the merits was part of the approach
13 adopted by Children's surrogates before the Examiner. Fortunately, the Examiner
14 admonished the parties at the hearings who attempted to go there to stop. After all, such
15 attacks were irrelevant to the considerations before her under the Code. Most participants got
16 the message and refocused on the merits.

17 Now that we are before Council, Children's and its appeal surrogates, Friends of
18 Children's Hospital, the Wilsons, and Laurelon Terrace revive such an approach, evidently
19 as part of Children's "public affairs" strategy. That "public affairs" strategy has also included
20 the spectacle of a "rally," organized by Children's public affairs consultant, the Fearey Group,
21 in front of the Municipal Building. Led by counsel for Laurelon Terrace, Children's rally
22 denounced the Laurelhurst Community Club for what the Hearing Examiner decided and
23 demanded that the Council approve Children's plan.
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1 It is a sad truism that attacking an opponent rather than addressing the merits can often
2 be a successful strategy in the public arena. It may be too much to ask that Children's and its
3 surrogates stand down from their "public affairs" strategy and instead concentrate on the
4 merits of the quasi-judicial land use decision. Therefore, although it should make no
5 difference whether land use decision concerns that found merit with the Examiner were raised
6 by one person or a thousand, LCC offers the following background.

7
8 There is considerable irony in the surrogates' appeal suggestions that LCC is not
9 representative of community views and that public opinion in Laurelhurst or elsewhere in the
10 City favored Children's all or nothing approach. While FOCH is undoubtedly populated to
11 some extent by Seattle residents who genuinely support Children's land use approach, its
12 membership also includes a full complement of nonSeattle residents, employees, and others.
13 They all have a right to their opinion – and to have their opinions reviewed on the merits – but
14 they do not have a right to attack LCC and those who share its concerns as somehow
15 "unrepresentative." As the background LCC placed in the record before the Examiner reflects,
16 LCC in fact predates FOCH by almost a century. LCC was originally formed in 1920 as the
17 Laurelhurst Improvement Club, to foster the "improvement and beautification" of the
18 Laurelhurst neighborhood. It has fulfilled this role ever since.

19
20 Members of LCC's Board of Trustees are elected by neighbors each year at the annual
21 meeting. To ensure neighborhood involvement, LCC maintains a website, publishes a
22 monthly community newsletter mailed to all households and businesses in the neighborhood,
23 transmits a periodic email newsletter, and devotes a segment of each Board of Trustees to
24 "calls and concerns" from neighbors. To be sure, LCC is no more perfectly representative of
25

1 public opinion in Laurelhurst than is the City Council of the City. But, as reflected in the
2 many, many independent comments submitted in the Children's matter, LCC has represented
3 in the process a significant and valid body of concern about the direction in which Children's
4 would like to head.

5 Children's and its surrogates have on occasion in earlier stages of this proceeding
6 made reference to public opinion surveys as justifying Children's uncompromising demands.
7 Laurelhurst resident and former LCC trustee, Liz Ogden, addressed the surveys commissioned
8 by Seattle Children's in her March 10, 2009 statement before the Hearing Examiner:
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10 "Finally, Ruth Benfield [of Children's Hospital] described in her testimony how the
11 hospital's surveys showed a high support for Children's growth, but it is important to
12 note that these surveys provided no absolutely no opportunity to express an opinion
13 that did not work in the hospital's favor. Responses were limited to specific options
14 such as: "strongly agree", "agree", and "not affected". There was no possible
15 outcome of these surveys but high support for Children's growth. These twenty
16 minute interviews, one of which I participated in myself, were so bizarre and
17 frustrating that the community club received an abundance of outraged comments
18 from our neighborhood."

19 Again, none of this should make a difference. What is before the Council is an
20 important quasi-judicial land use decision – not a plebiscite or popularity contest. The
21 background presented above should be noted nonetheless in light of the appellate claims by
22 Children's surrogates.

23 CONCLUSION

24 LCC's Appeal should be upheld and those of Children's and its surrogates denied.
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1 Respectfully submitted this 21st day of September, 2009.

2 EGLICK KIKER WHITED PLLC

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4
5 By 

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6 Jane S. Kiker, WSBA #21586

7 Attorneys for Appellant

8 Laurelhurst Community Club

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26 LAURELHURST COMMUNITY CLUB'S RESPONSE TO CHILDREN'S
HOSPITAL AND ITS SURROGATES' AND TO DPD'S APPEALS OF
HEARING EXAMINER'S FINDINGS, CONCLUSIONS, AND
RECOMMENDATION - 41



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CERTIFICATE OF SERVICE

I certify that on the 21st day of September, 2009, I sent copies of the foregoing document (including this Certificate of Service) by first class mail, by depositing the copies in the U.S. mail, with proper postage affixed, at the addresses listed below.

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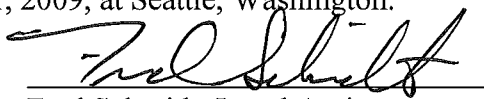
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I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Dated this 21st day of September, 2009, at Seattle, Washington.


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